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Phoenix, Arizona 85007

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75-254

August 7, 1975

The Honorable Anna J. Cullinan
State Representative
Arizona House of Representatives
State House
Phoenix, Arizona 85007

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Dear Representative Cullinan:

This is in response to your letter of March 31, 1975 concerning the constitutionality of proposals to amend A.R.S. § 44-134, Capacity of Minor for Blood Donation, to permit a seventeen-year-old under certain conditions to consent to donate blood without the consent of his parent(s).

There do not appear to be any reported decisions concerning the constitutionality of a state statute authorizing a mature minor who is otherwise competent to give a valid consent for the donation of blood; however, it is well established that the state, as *parens patriae*, is authorized to legislate for the protection or care of children within its jurisdiction. State v. Boles, 147 W.Va. 674, 130 SE.2d 192 (1963). Thus, the state has the authority to define the status of infancy. The Court of Appeals of Kentucky held in Jones v. Crawford, 119 Ky. 554, 84 S.W. 568 (1905) that "the disability of infancy as discussed in law is a status created by the law and may be subject to limitations or exceptions established by the lawmakers."

Such limitations or exceptions must be "reasonable" in order to satisfy the privileges and immunities clauses of the United States and Arizona Constitutions. In Edwards v. Alhambra Elementary School District, 15 Ariz.App. 293, 295, 488 P.2d 498 (1971), the Arizona Court of Appeals said:

. . . the classification for purposes of constitutional unequal treatment between classes must be founded on reason. [Citations omitted] One of the tests of the reasonableness of the classification is whether there is a substantial difference between those within and without the class.



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The age of majority in Arizona for most purposes is eighteen. Statutory exceptions include authorizations for: 1) any minor who may have contracted a venereal disease to consent to care and treatment therefor (A.R.S. § 44-132.01); 2) minors twelve years of age or older to receive needed care or treatment (A.R.S. § 44-133.01); 3) female minors twelve years of age or older may, if the parent or guardian cannot be promptly contacted, consent to medical and surgical examination, diagnosis and care in connection therewith (A.R.S. § 44-135).

An eighteen-year-old in Arizona has the same capacity as any other adult to consent to donate blood. The proposed bill would extend this capacity to seventeen-year-olds subject to two additional conditions:

1. The blood must be donated without monetary compensation.
2. The donation must be at a federally-approved blood bank.

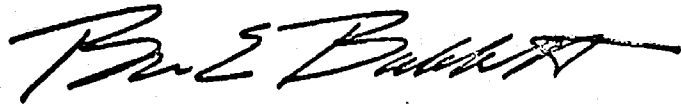
We believe that the proposed bill provides a reasonable classification for the purpose of satisfying the state and federal constitutions and that adequate provision is made for the protection of children in Arizona.

The Arizona Supreme Court considered the constitutionality of special exemptions for certain classes of minors in Valley National Bank v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945), wherein it held that an Arizona statute which removed any legal disability of a minor who qualified for certain veterans' benefits, and of the minor spouse of such veteran, with respect to all contracts made for the purpose of securing such benefits was constitutional. We believe that the guidelines laid down in the Glover case regarding the constitutionality of legislation exempting certain classes of minors from a legal disability for limited purposes are applicable to the question under consideration and that the amendment of A.R.S. § 44-134 proposed by Senate Bill 1029 adequately meets these guidelines.

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For the foregoing reasons, it is the opinion
of this office that a statute such as that proposed in
Senate Bill 1029 would be constitutional if enacted.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bruce E. Babbitt". The signature is fluid and cursive, with a long horizontal stroke at the end.

BRUCE E. BABBITT
Attorney General

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